

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4656 of 2015
& M.P.No.1 of 2015

S.M.Anwar @ Janab Abdul Wahab
@ Mohammed Anwar Syed, unsound mind,
rep by his Natural Guardian, daughter,
A.Mufidunnisa .. Petitioner

Vs.

1.H.Shaheen
2.H.Sartaj
3.G.Shiddharaju .. Respondents

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 10.10.2015 made in I.A.No.255 of 2014 in O.S.No.30 of 2014 on the file of the Additional District and Sessions Judge, Hosur.

For Petitioner : Mr.R.Jayaprakash

For R1 & R2 : Mr.Hariharan
for M/s.V.Nicholas

For R3 : M/s.N.Sureka

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 10.10.2015 made in I.A.No.255 of 2014 in O.S.No.30 of 2014 on the file of the Additional District and Sessions Judge, Hosur.

2.The petitioner is third party, respondents 1 and 2 are the plaintiffs and third respondent is the defendant in O.S.No.30 of 2014. The respondents 1 and 2 filed the said suit against the third respondent, for a specific performance of agreement of sale and for a permanent injunction, restraining the third respondent from in any way selling the suit property to any third parties. The petitioner has filed I.A under Order 1 Rule 10 C.P.C for impleading one S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed as party defendant in the suit. A.Mufidunnisa also filed the present I.A.No.255 of 2014 for permitting her to act as next friend and natural guardian for S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed. According to the petitioner, S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed is owner of the

property. He is 81 year old mentally ill person, who is bedridden and unable to walk and A.Mufidunnisa is his daughter. The respondents colluded together and filed the collusive suit.

3.The respondents 1 and 2 and 3rd respondent filed separate counter affidavits and denied all the allegations made by the petitioner. The respondents have taken similar stand that petitioner is not daughter of S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed. She is daughter of one Syed Kallack of Bethalapalli Village. If really that S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed is mentally ill, the petitioner must have got Mental Health certificate from the Senior Neurologist in the rank of Additional Director of a Speciality Hospital and petitioner must get declaration by filing O.P before the Principal District Judge, under Section 53 of Mental Health Act. The petitioner filed another petition under order 1 Rule 10 C.P.C for impleading the unsound mind person/third party as party to the suit. It is well settled, that in the suit for specific performance of agreement of sale, no third party is having any right. In view of the same, the present petition also is not maintainable.

4. Before the learned Judge, the petitioner examined one Dr. Vijay Mehtry as PW1 and examined herself as PW2 and marked 5 documents as Exs. A1 to A5.

5. The learned Judge, considering the averments in the affidavit, counter affidavit and all the materials available on record, dismissed the application.

6. Against the said order dated 10.10.2015 made in I.A.No.255 of 2014 in O.S.No.30 of 2014, the petitioner has come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioner submitted that petitioner has proved that S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed is mentally ill person by examining PW1, the Doctor, who is specialist in the field. The learned Judge, on erroneous grounds, rejected the evidence of Doctor. The learned Judge failed to comply with Order XXXII Rule 15 C.P.C. The learned Judge failed to see that petitioner has no adverse

interest to that of S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed. For the above reasons, the impugned order is liable to be set aside. The learned counsel for the petitioner, in support of his contentions, relied on the following judgments reported in:

(i) 2006 (4) L.W 393 (C.S.Navamani Vs. C.K.Sivasubramanian):

"24.The enquiry contemplated under Order 32 Rule 15 is mandatory, to ascertain the mental state of mind of a person, before he is adjudged as unsound or mentally infirm. The word "enquiry" used in the provision means, "to make an examination", to adjudge a person judicially as a lunatic or mentally infirm. "Adjudge" means, "to decide or to determine judicially", which means that there must be adequate materials to come to such a conclusion, that a person has to be represented by a guardian.

25.When there is an allegation of unsound mind or mental infirmity, it is the duty of the Court to examine the individual and if necessary, seek the assistance of an expert to adjudge as to whether the individual is having a sound mind and capable of managing the affairs. As a precaution, the evidence of expert in the Medical profession will be useful in understanding the meaning and the symptoms of any disease dealing with

mental deterioration."

(ii) 2014 (5) CTC 595 (Sujatha Elizabeth Prasad and others Vs. Shermila Ann Sherry and others):

"19. What is material while appointing a guardian ad litem is whether the guardian so appointed has interest adverse to that of the person of whom he/she is appointed as the guardian...."

8. The learned counsel appearing for the respondents 1 and 2 and third respondent separately contended that medical certificate produced by the petitioner is bereft of particulars and PW1, Dr. Vijay Mehtry was cross-examined by the counsel for the respondents 1 and 2 and his evidence does not prove that proposed party is mentally ill. In the judgment relied on by the learned counsel for the petitioner in **2006 (4) LW 393**, the person was already in unsound mind. The father filed the petition to set aside the said order. The said judgment is not applicable to the facts of the present case. The provisions of Order 32 Rule 15 C.P.C is complied with by the learned Judge and enquiry was conducted. After conducting enquiry, the application was dismissed by the learned Judge.

9. Heard the learned counsel appearing for the petitioner as well the respondents 1 and 2 and 3rd respondent and perused the materials available on record.

10. According to the petitioner, she is the daughter of S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed, who is the owner of the suit property. He is bedridden, mentally ill and unable to walk. She filed two applications, one for impleading and another in I.A.No.255 of 2014 to permit her to act as next friend and natural guardian for S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed. To act as a guardian of mentally ill person, a person who seeks to act as a guardian, must file O.P before the District Judge and get a declaration that the person is mentally ill and get herself appointed as guardian of concerned person. The petitioner failed to get any orders from the concerned District Court. From the impugned order of the learned Judge, it is seen that pending application, the learned Judge directed S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed to appear before the Court. S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed

appeared before the Court and answered the question put to him before the learned Judge. He was able to walk and appeared hale and healthy, though he was aged. The petitioner has already filed O.S.No.68 of 2015 for declaration of sale deed in favour of third respondent as null and void.

11. In the judgment reported in **2006 (4) LW 393**, this Court held that while considering the issue whether the person is mentally ill or not, the Court must conduct an enquiry under Order 32, Rule 15 C.P.C. This Court has held that Court must put question to the concerned person to ascertain the mental capacity of the said person and if necessary take assistance from the expert. In the present case, the learned Judge has complied with the provisions of Order 32 Rule 15. The learned Judge had directed the S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed to appear before the Court. When S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed appeared, the learned Judge put questions to him and the said S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed had understood the questions and gave correct answers to the questions put to him. The petitioner has stated that S.M.Anwar @ Janab Abdul Wahab @ Mohammed Anwar Syed is bedridden. On the

other hand, when he appeared before the Court, though he was aged, he was able to walk and he was hale and healthy.

12. For the above reasons, this Civil Revision Petition is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13.11.2017

Index: Yes/No
gsa

To

The Additional District and Sessions Judge,
Hosur.



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V.M.VELUMANI,J.

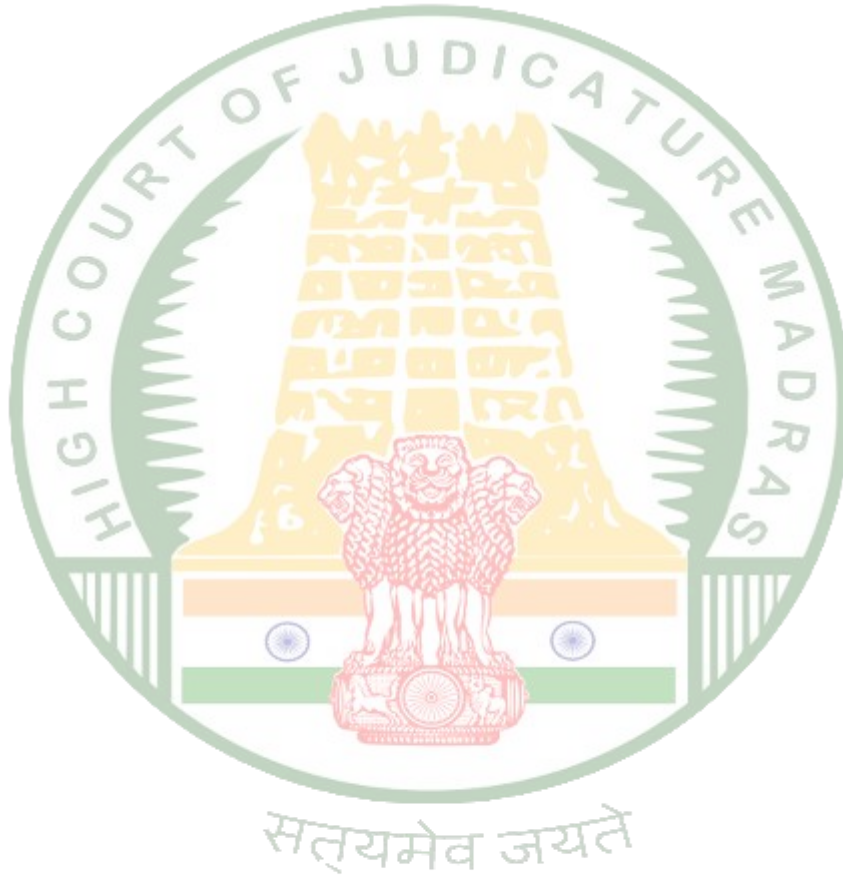
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